IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 66 OF 2006.

1. Shri Purso Narayan Gosavi,
aged 42 years, and his wife;

2. Smt. Tarabai Purso Gosavi.

3. Shri Shankar Narayan Gosavi,
major, and his wife;

4. Smt. Mayawati Shankar Gosavi,
major.

5. Shri Mahableshwar Narayan Gosavi,
major, and his wife;

6. Smt. Mangal alias Ashabai
Mahabaleshwar Gosavi, major.

7. Shri Sadanand Narayan Gosalvi,
major.

8. Shri Krishna Narayan Gosavi,
major, and his wife:

9. Smt. Radhabai Krishna Gosavi,
all residents of Kalsi, Cotigaon,
Canacona Taluka, Goa. .... Appellants.

Versus

1. Shri Ganesh Raghoba Gosavi,
major.
2. Shri Pisso alias Zorgo Gopal Gosavi,
major (expired)
a) Smt. Parvati Pisso Gosavi,
r/o H. No. 1155, Kalashi, Cotgaon,
Canacona, Goa.

b) Smt. Vimla Pisso Gosavi,
w/o late Ganapati Gosavi,
d/o late Pisso Gopal Gosavi.

c) Shri Dayanand Ganapati Gosavi,
s/o late Ganapati Gosavi

d) Smt. Saroja Dayanand Gosavi,
w/o Dayanand Ganapati Gonsavi.

e) Shri Indrajit Ganapati Gosavi,
s/o late Ganapati Gosavi.

f) Shri Raju Ganapati Gosavil,
son of late Ganapati Gosavi.
All residents of H.No. 1154/B,
Kalashi, Poinguinim, Canacona, Goa.

g) Smt. Suvarna G. Gosavi
and her husband;

h) Shri Umanath Mathakar,
residents of Kakoda, Curchorem, Goa.

3. Shri Mono Vithu Gosavi,
major (expired).
(a) Smt. Salu alias Laxmi M. Gosavi,
widow of late Mono V. Gosavi.

(b) Shri Vithoba M. Gosavi,
s/o Shri Mono M. Gosavi.

© Smt. Sushila alias Rukmini V.
Gosavi, w/o Shri Vithoba M. Gosavi.

(d) Shri Chandrakant m. Gosavi,
s/o Mono V. Gosavi.

(e) Smt. Kanchan C. Gosavi,
w/o Chandrakant M. Gosavi.

(f) Shri Arun M. Gosavi,
s/o Shri Mono Gosavi.

(g) Smt. Vishanti V. Gosavi,
widow of Shri Vithal Gosavi.

(h) Smt. Sandhya R. gosavi,

d/o Shri Vithal Gosalvi.

i) Kum. Baby V. Gosavi,
d/o Shri Vithal Gosavi.

j) Smt. Jayashree R. Gosavi,
w/o Shri Rajaram Gosavi.

k) Shri Rajaram Gosalvi.

l) Smt. Urmila R. Gosavi,
wife of Shri Anand Gosavi.
m) Shri Anand Gosavi.

n) Kum. Kalpana Gosavi,
d/o Shri Mono V. Gosavi.

o) Kum. Salvita M. Gosavi,
All residents of H. No. 1154/B,
Poinguinim, Canacona, Goa.

4. Shri Pundalic Sablo Gosavi,

(a) Smt. Lilalvlati Pundalik Gosalvi,
major of age, housewife.
(b) Miss Sulaksha Pundalik Gosavi.
© Miss Manda pundalik Gosavi.
(d) Miss Vidya pundalik Gosavi.
(e) Miss Nisha Pundalik Gosavi.
All major of age, r/o
H. No. 1433. .... Respondents.

Shri V. Rodrigues, Advocate for the Appellants.

CORAM: S. K. SHAH, J.

DATE: 12th JANUARY, 2007.

ORAL JUDGMENT:

Heard the learned Counsel for the Appellants. None for the

respondents, though the respondents were duly served.

2. The Order which is impugned is the one passed by the learned Additional District Judge, whereby he remanded the matter to the Trial Court, requiring the Trial Court to record its finding on Issues No. 2, 4, 5 and 6 in accordance with Order XIV, Rule read with order XX Rule 5 of C.P.C. and pass appropriate order in accordance with law.

3. The learned Counsel for the appellants states that so far as Issue No.1 which is decided by the Trial Court, there is no finding given by the lower Appellate Court. He also submits that it is not clear as to which part of the Judgment of the Trial Court, has been confirmed or rejected nor there is any discussion, reason or finding in that regard. He also further submits that the lower Appellate Court has erred in not remanding issue No.1 also to the Trial Court for proper adjudication.

4. I do not find any merit in the submissions made on behalf of the appellant. On reading the Order of the lower Appellate Court, it is clear that what the lower Appellate Court considered was that the trial Court while deciding Issue No.1, did not give any finding as to Issues No.2, 4, 5 and 6. There was no discussion with regard to these Issues. The lower Appellate Court therefore held that as required under Order XIV, Rule 2,

of C.P.C. the trial Court was required to consider all the issues and record findings thereon. It is on this observation, that the matter was remanded to the Trial Court by specifically directing the trial Court to record its finding to the specific Issues, namely Issues No.2, 4, 5 and 6. It is therefore clear that all the aspects of appeal have not been considered at all, as the matter is remanded for recording findings on the issues.

5. The lower Appellate Court however committed an error in directing the trial Court to decide the suit within a period of six months. It is clear from the order of the Appellate Court that he had not considered the finding of the trial Court with regard to Issue No.1 on which finding the trial Court had disposed of the suit. The Order also clearly indicates that the lower Appellate Court required the Trial Court to record its finding with regard to issues No.2, 4, 5 and 6. If this was the limited purpose for which the matter was remanded back, the direction to the trial Court to decide the suit once again was illegal and improper. That portion of the order shall have to be set aside.

6. Consequently the appeal is partly allowed. The Order of the lower Appellate Court directing the trial Court to record finding with regard to the Issues No.2, 4, 5 and 6 is confirmed. However, the further order of the lower Appellate Court directing the trial Court to decide the suit is hereby

set aside. The trial Court shall record the findings with regard to Issues No. 2, 4, 5 and 6 and return them to the Appellate Court, which on receipt thereof, shall decide the whole appeal on its merits.

S. K. SHAH, J.

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